

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TOMMY JO KALLHOFF

Claimant

VS.

LS INDUSTRIES, INC.

Respondent

AND

CONTINENTAL WESTERN INSURANCE CO.

Insurance Carrier

)
)
)
)
)
)
)
)
)
)

Docket No. 1,009,145

ORDER

Respondent appeals the April 24, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark. Respondent contends that the evidence does not support claimant's contention that he suffered accidental injury arising out of and in the course of his employment.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges he suffered accidental injury to his back and right shoulder in the shoulder blade area on January 27, 2003, while moving a motor. Claimant, a receiving and stock supervisor for respondent, would regularly move certain motors with the use of a rolling dolly when stock came in to respondent's warehouse. The dispute in this matter centers around whether claimant advised respondent of the accident and whether the accident may have occurred at some other time prior to the alleged date of accident. Claimant acknowledges he had similar symptoms the week before, while moving

merchandise for respondent. However, claimant testified that on the date of the alleged accident, while moving the motor, his shoulder popped. He later developed numbness in his right arm. When claimant first obtained medical treatment on the date of accident with his family doctor, R. Thomas, D.O., he advised Dr. Thomas of right upper back pain and pain in his right arm. There was no indication of any work-related injury, and the January 27, 2003 medical report indicates "no history of injury".

Claimant did, however, discuss his problems with his coworker, Debra Walker, on January 27. He advised Ms. Walker that he had been moving motors approximately one week before, but made no mention of any physical difficulties at that time. He did mention that he had experienced back pain on January 27, 2003, but, in her opinion, he was trying to figure out how he had hurt himself.

Respondent also obtained the deposition of Linda Weir-Enegren, claimant's immediate supervisor. Claimant discussed the alleged accident with Ms. Enegren during the afternoon of January 27, 2003, but again claimant was not sure of the cause. He had described tingling in his right arm at that time. She advised claimant to go to Minor Emergency Center (MEC) if it was work related, or to his family doctor if not. Claimant chose to go to his family doctor, Dr. Thomas.

Claimant contacted Ms. Enegren the next day, advising that his injury might be work related. She arranged for him to see the company doctor at MEC on January 28, 2003. Claimant advised the health care providers at MEC that he had been hurting since January 23, 2003, but that he had felt a pop in his back in the same area on January 27, 2003, while picking up a motor at work. The report also indicated he stated "I don't think I did this at work." However, claimant denies making that particular statement.

Ms. Walker, who was the production control and purchasing coordinator for respondent, investigated whether any motors had arrived at respondent's warehouse on January 27. She testified that the records indicated no motors arrived on January 25 through January 27. However, there was a motor which arrived on January 24, which for some reason was not logged in until January 27. Both she and Ms. Enegren acknowledged that it would be part of claimant's responsibilities to move the motors in the fashion he described.

In workers' compensation litigation, it is claimant's obligation to prove his entitlement to benefits by a preponderance of the credible evidence.¹ The Board acknowledges the evidence in this instance is somewhat contradictory regarding what claimant may or may not have told various employees of respondent and various health care providers. However, there was an indication on the afternoon of the date of accident that claimant

¹ K.S.A. 44-501 and K.S.A. 44-508(g).

suffered an accidental injury in the manner which he described. The work which claimant described is work which he would regularly do. Claimant discussed his pain complaints on that day with not only his immediate supervisor, but also a coworker. Additionally, he discussed the work-related connection to the injury the next day with MEC, when he talked of picking up a motor at work and feeling a pop in his upper back in the right shoulder blade area. The Board finds for the purposes of preliminary hearing that claimant has proven by a preponderance of the credible evidence that he did suffer accidental injury arising out of and in the course of his employment and the Order of the Administrative Law Judge should, therefore, be affirmed.

Preliminary hearing findings are not binding in a full hearing on the claim, but are subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated April 24, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2003.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
James M. McVay, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Director